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In re Application of	:	
RUMP, Niels, et al.	:	
Application No.: 09/913,690	:	
PCT No.: PCT/EP99/09980	:	DECISION ON
Int. Filing Date: 15 December 1999	:	
Priority Date: 16 February 1999	:	PETITION UNDER
Attorney Docket No.: 13189.138	:	
For: METHOD AND APPARATUS FOR	:	37 CFR 1.47(a)
GENERATING A DATA STREAM AND	:	
METHOD AND DEVICE FOR PLAYING	:	
A DATA STREAM	:	

This is a decision on applicants' "Statement of Facts In Support of Filing On Behalf of Nonsigning Inventor (37 C.F.R. Section 1.47)," filed in the United States Patent and Trademark Office (USPTO) on 24 January 2002.

BACKGROUND

On 15 December 1999, applicants filed international application PCT/EP99/09980, which claimed a priority date of 16 February 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 24 August 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 13 September 2000, within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 16 August 2001.

On 16 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 19 October 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of oath or declaration were required.

On 24 January 2002, applicants submitted the instant petition under 37 CFR 1.47, which was accompanied by, *inter alia*, a combined declaration and power of attorney executed by inventors Juergen Koller and Karlheinz Brandenburg.

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign or cannot be reached after diligent effort,

(3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1) and (4) have been met. (1) The petition fee of \$130 has been paid. (4) The declaration submitted is accepted as complying with 37 CFR 1.47(a).

Item (2) has not been met. Applicants are asserting that the nonsigning inventor cannot be reached after diligent effort. It is noted that had this petition been based on the refusal of inventors to sign the declaration, applicants would have had to demonstrate that *bona fide* attempt was made to present a copy of the application papers to the inventors. MPEP 409.03(d).

Under 37 CFR 1.47(a), the petition must supply proof of pertinent facts. It is noted that "copies of documentary evidence, such as a internet searches, certified return mail receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached" should be included. MPEP §409.03(d).

In this case, Mr. Schoppe states a request was submitted to the residence registration office in Erlangen and the telephone inquiry office. These are not documented. Further, a statement should outline what steps, e.g., internet searches, were taken to locate Mr. Rump beyond searching in Erlangen.

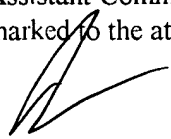
Item (3) has not been met. Applicants list the last known address of Niels Rump as Brueckenstrasse 13, Erlagen D-91056, Germany. This is also the address listed on the declaration. However, the inquiry at the residence registration office was in Erlangen and the letters were directed to an address in Erlangen.

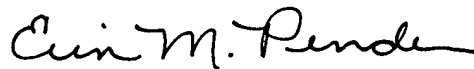
CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.


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